



Ohio Consumers' Counsel

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Consumers' Counsel

DOCKET FILE COPY ORIGINAL

94-129

September 12, 1997

William F. Caton, Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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**Re: *In the Matter of Implementation of the Subscriber Carrier Selection Changes
Provisions of the Telecommunications Act of 1996, Policies and Rules
Concerning Unauthorized Changes of Consumers' Long Distance Carriers.***

Dear Secretary:

Enclosed please find the original and eleven (11) copies of the Comments of the Ohio Consumers' Counsel, plus diskette to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Thank you for your attention to this matter.

Sincerely,

Evelyn R. Robinson
Assistant Consumers' Counsel

ERRM/tnb
Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Implementation of the Subscriber)
Carrier Selection Changes)
Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of)
Consumers' long Distance Carriers)

CC Docket No. 94-129

INITIAL COMMENTS OF THE OHIO CONSUMERS' COUNSEL

INTRODUCTION

On July 15, 1997, the Federal Communications Commission (Commission) issued a Further Notice of Proposed Rulemaking (FNPRM) in this docket. In this FNPRM, the Commission seeks comments on a number of issues pertaining to Section 258 of the Telecommunications Act of 1996. This section includes safeguards to deter slamming. As the Commission notes,

This increase in the number of IXC's providing service, coupled with technological advances in telecommunications markets have created opportunities for unscrupulous carriers or their marketing agents to use deceptive practices to convert large numbers of consumers to their service to reap economic benefits.

FNPRM at ¶6.

Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel (OCC), is pleased to offer his comments in this docket on behalf of Ohio's residential

telecommunications consumers. Chapter 4911, Ohio Revised Code. These comments follow the outline of the FNPRM. The OCC's immediate comments address only a few of the issues; thus, only these headings are included.

APPLICATION OF THE VERIFICATION TO ALL TELECOMMUNICATIONS CARRIERS (§§ 11-15)

¶ 14. The Commission seeks comments on whether independent verification should be required for telecommunications carriers that execute preferred carrier (PC) changes. The Commission has tentatively concluded that independent verification should not be required.

The OCC submits that independent verification should be required for some--but not all--carriers. The Commission has recognized the increasing number of slamming complaints. If any telecommunications carrier reaches a threshold level of complaint, then the Commission should require independent verification for all PC changes. At this time, the OCC does not have a recommendation as to the appropriate threshold level. If the Commission concludes that independent verification would be too costly, even after such a threshold is reached, the OCC alternatively recommends independent verification of at least every twenty-fifth PC change. The cost of independent verification, after reaching a threshold level of complaint, should act as an additional disincentive to slam.

¶ 15. The Commission seeks comments on whether an inducement letter from an incumbent LEC to a subscriber seeking to change carriers would violate the verification rule. The OCC submits that it would. An inducement letter in such circumstances would require additional, unnecessary effort on the subscriber to not remain with the incumbent LEC. Thus, such a letter would be inconsistent with pro-competitive goals.

VIABILITY OF THE “WELCOME PACKAGE” VERIFICATION OPTION (§§ 16-18)

§ 18 The OCC agrees with the Commission’s tentative conclusion that the “welcome package” verification option should be eliminated. We also agree with the conclusion of NAAG, cited by the Commission, that the “welcome package” verification option operates like a negative option LOA, and thus is inconsistent with Section 64.1150(f). In addition, the “welcome package” imposes an unreasonable burden to subscribers who do not wish to change PCs.

§ 23. The Commission seeks comment regarding the effect of a PC freeze. The OCC submits that subscribers should be provided accurate information to enable a clear selection of each telecommunications carrier. The OCC also notes that a PC freeze should be automatically continued if a subscriber changes LECs. To require the subscriber to request another PC freeze is unreasonably burdensome to the subscriber.

LIABILITY OF SUBSCRIBER TO CARRIERS (§§ 25-27)

§§ 25-27. The Commission seeks comments on the advantages and disadvantages of absolving subscribers for unpaid charges. At the outset, the OCC recognizes that slammed customers do receive service - albeit not from the customer’s carrier of choice. Thus, it is arguable that payment for such service does not harm the customers/subscribers. However, requiring payment for slammed service would reward the unauthorized carrier, which obviously is an incentive to slam. Thus, the OCC agrees with NAAG’s conclusions, cited in Paragraph 26, that rewarding the wrongdoer by allowing it to benefit from the wrongful action is contrary to established principles of equity.

¶ 27. This paragraph seeks comments on whether the slammed customers should have the option of paying charges assessed by the unauthorized carrier. The OCC recommends the implementation of an absolute rule: Subscribers do not pay for slammed or unauthorized services. The unauthorized carrier, in seeking to collect the charges, may not adequately or properly inform the subscriber of the option to refuse payment for the unauthorized services. This could lead to unreasonable burden and/or pressure on the subscriber to pay for the unauthorized service.

In this paragraph, the Commission notes that absolving subscribers of the liability associated with unauthorized service deprives the authorized carrier of foregone revenue. However, the authorized carrier has not have provided any service to the slammed subscriber. Thus, giving revenues from the subscriber to the properly authorized carrier would be highly inappropriate.

LIABILITY OF CARRIER TO SUBSCRIBERS (¶¶ 29-30)

¶ 29. Here, the Commission requests comments on the duties and obligation of the unauthorized carrier as well as the authorized carrier with respect to making the subscribers whole. The OCC agrees that a subscriber should receive full and prompt reparation for the slam. However, the authorized carrier is as blameless as the subscriber in unauthorized PC changes. Thus, it is ultimately the obligation of the unauthorized carrier to provide full and prompt reparation to the subscriber.

The Commission also seeks comments in this paragraph on whether the slammed subscriber must be reimbursed by a properly authorized carrier collecting charges paid to the unauthorized carrier by the subscriber. The OCC submits that such reimbursement

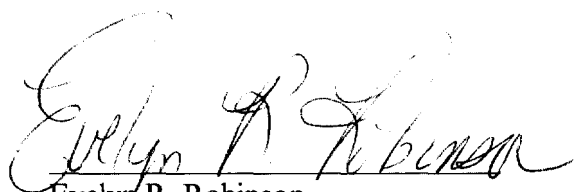
should occur. In this instance, the properly authorized carrier acts as an agent of the unauthorized carrier and the reimbursement to the subscriber is simply the return of monies not actually owed to the unauthorized carrier. The subscriber should not be required to bear the financial consequences of slamming pending the outcome of the real dispute, which is between the unauthorized carrier and the properly authorized carrier.

CONCLUSION

The OCC appreciates the opportunity to comment on these critical issues on behalf of Ohio's residential telecommunications consumers. Slamming is a reprehensible practice which cannot be tolerated. The Commission's adoption of reasonable, rational, and equitable rules governing slamming is critical to consumer protection in this competitive environment.

The OCC requests that the Commission carefully consider these issues. The end result here should be rules which deter slamming and makes whole the subscribers who have been victimized by slamming when it occurs.

Respectfully submitted,
ROBERT S. TONGREN
CONSUMERS' COUNSEL

A handwritten signature in cursive script, reading "Evelyn R. Robinson".

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Assistant Consumers' Counsel

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